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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 51, 61, and 69**

**[WC Docket No. 18-155; FCC 22-54; FR ID 98377]**

# Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission seeks comment on proposed amendments to prevent companies from attempting to evade its existing access stimulation rules, harming customers, and imposing unwarranted costs on America's telecommunications networks.

**DATES:** Comments filed in response to this Further Notice of Proposed Rulemaking are due **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].** Reply comments are due [**INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Federal Communications Commission, 45 L St., NW, Washington, DC 20554

**FOR FURTHER INFORMATION CONTACT:** Lynne Engledow, FCC Wireline Competition Bureau, at 202-418-1520 or via email at lynne.engledow@fcc.gov. For additional information concerning the proposed Paperwork Reduction Act information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Nicole Ongele at 202-418-2991.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking adopted on July 14, 2022, and released on July 15, 2022. A

full-text copy of this document may be obtained at the following internet address: https://www.fcc.gov/document/fcc-proposes-updated-rules-eliminate-access-arbitrage-0.

## I. BACKGROUND

1. The access charge regime was originally designed to compensate carriers for the use of their networks by other carriers. It also helped ensure that people living in rural areas had access to affordable telephone service through a system of implicit subsidies. The key to this system was the charges IXCs were required to pay to LECs for access to their networks—particularly the high charges IXCs had to pay rural LECs to terminate calls to rural customers. In 1996, Congress directed the Commission to eliminate these implicit subsidies—a process the Commission has pursued by steadily moving access charges to a bill-and-keep framework. As part of the ongoing transition to bill-and-keep, the Commission has capped most access charges and moved terminating end-office charges and some tandem switching and transport charges to bill-and-keep.

2. Arbitrage schemes take advantage of relatively high access charges, particularly for the remaining terminating tandem switching and transport services that have not yet transitioned to bill-and-keep. Switched access charges were originally established based on the costs of providing service and normal call volumes. These rates were subsequently capped and are no longer based on actual costs or actual usage and therefore no longer decrease when traffic volumes increase. Some LECs devised business plans to exploit this fact by artificially stimulating terminating call volumes through arrangements with entities that offer high-volume calling services. The resulting high call volumes generate revenues that far exceed the costs that the terminating tandem switching and tandem switched transport charges are designed to cover.

3. "Free" conference calling, chat lines, and certain other services accessed by dialing a domestic telephone number are all types of calling services that can be, and are, used to artificially increase call volumes. The terminating switched access charges, however, were

intended to allow LECs to recover the costs of operating their networks, not to allow LECs to subsidize "free" conference calling, chat line, and similar "free" services offered by the LECs' end-user customers. IXCs nonetheless have no choice but to carry traffic to these high-volume calling services and pay the tariffed access charges to the terminating LECs or the Intermediate Access Providers the LECs choose, inefficiently transferring revenues from IXCs to the traffic stimulators that greatly exceed the cost these termination charges are intended to cover. As a result, terminating tandem switching and tandem switched transport charges that these high-volume calls generate are shared by all of the IXC's customers, who collectively fund the "free" services offered by high-volume calling service providers, whether the IXC customers use those services or not.

4. In the 2011 *USF/ICC Transformation Order*, the Commission adopted rules identifying rate-of-return LECs and competitive LECs engaged in access stimulation and requiring that such LECs lower their tariffed access charges. The 2011 rules defined "access stimulation" as occurring when two conditions are satisfied: (1) the rate-of-return LEC or competitive LEC has entered into an access revenue sharing agreement that, "over the course of the agreement, would directly or indirectly result in a net payment to the other party;" and (2) one of two traffic triggers is met: either an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, or more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month, compared to the same month in the preceding year. At the same time, the Commission began moving terminating, end-office switched access charges to bill-and-keep.

5. Parties engaged in access stimulation adapted to these rules by taking advantage of tandem switching and transport access charges that had not yet transitioned to bill-and-keep, namely, the terminating tandem charges for rate-of-return and competitive LECs. As a result, new access arbitrage schemes forced IXCs to pay high tandem switching and tandem switched transport charges to access-stimulating LECs or to Intermediate Access Providers that may be

chosen by those access-stimulating LECs. And although the direct cost to IXCs of access stimulation dropped because of the rules adopted in 2011, the number of access-stimulated minutes did not. Indeed, arbitrageurs openly promoted "opportunities to get paid for generating minutes by dialing telephone numbers owned by access stimulator LECs."

6. In 2019, the Commission responded to the new access arbitrage schemes that had sprung up after 2011 by broadening the scope and reach of its Access Stimulation Rules. Most significantly, the Commission found that requiring "IXCs to pay the tandem switching and tandem switched transport charges for access-stimulation traffic is an unjust and unreasonable practice" that was prohibited pursuant to section 201(b) of the Communications Act of 1934, as amended (the Act). The Commission then adopted rules making access-stimulating LECs—rather than IXCs—financially responsible for the tandem switching and tandem switched transport service access charges associated with the delivery of traffic from an IXC to an access-stimulating LEC serving end users at its end office or its equivalent. The Commission adopted these changes to reduce carriers' incentives to artificially inflate traffic volumes by routing traffic inefficiently to maximize access charge revenues. The Commission also found that combatting such arbitrage reduces call congestion and service disruptions. The Commission recognized that arbitrage may occur even when there is no revenue sharing agreement, so it modified the definition of access stimulation to include two alternative traffic ratio triggers (one applicable to competitive LECs and one applicable to rate-of-return LECs) that do not require a revenue sharing component.

7. Since these rules took effect, parties have advised Commission staff of new efforts by access stimulators to evade the updated rules by integrating into the call flow IP enabled (IPES) Providers. For example, some parties described concerns that access stimulators are "converting traditional CLEC [(competitive LEC)] phone numbers to IPES numbers in order to claim that the [*Access Arbitrage Order*] is inapplicable" because the traffic is bound for telephone numbers obtained by IPES Providers and not bound for LECs serving end users.

8. USTelecom and its members allege that a substantial and growing portion of traffic that previously terminated through access-stimulating LECs now terminates through IPES Providers. AT&T and Verizon allege that certain LECs are attempting to evade the Commission's Access Stimulation Rules by, for example, having an IPES Provider take the place of the LEC delivering calls to an end user. As a result, IXCs allege, certain LECs claim the Access Stimulation Rules do not apply because the IPES Provider—and not the LEC—is responsible for delivering calls to the end user. In such a scenario, it is alleged that because the call flow does not include an access-stimulating LEC serving end users, such LECs continue to bill IXCs for the termination of access-stimulated traffic. Thus, IXCs and their long-distance customers continue to bear the costs of these calls to high-volume calling services. Inteliquent and Lumen describe a different call flow scheme in which the traffic does not pass through a LEC. In this call flow, an Intermediate Access Provider (tandem service provider) transmits long-distance traffic directly to an IPES Provider. USTelecom explains that some IPES Providers claim that the Access Stimulation Rules do not apply to traffic terminating to "IPES numbers," and therefore the IPES Providers are not responsible for the costs of tandem switching and transport, "regardless that their traffic patterns qualify as access stimulation under the Commission's rules."

## II. DISCUSSION

9. In this Further Notice, we propose to eliminate perceived ambiguity in our rules that the record shows companies are seeking to leverage to force IXCs and their long-distance customers to continue to bear the costs of high-volume calling services by incorporating IPES Providers into the call path. This is an increasingly important issue because IPES Providers are prevalent in today's networks. As a result, we propose that when traffic is delivered to an IPES Provider by a LEC or an Intermediate Access Provider and the terminating-to-originating traffic ratios of the IPES Provider exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation. In such cases, we propose that the

Intermediate Access Provider would be prohibited from imposing tariffed terminating tandem switching and transport access charges on IXCs sending traffic to the IPES Provider or the IPES Provider's end-user customer.

10. The rules we propose will serve the public interest by reducing carriers' incentives and ability to send traffic over the Public Switched Telephone Network (PSTN) solely for the purpose of collecting tariffed tandem switching and transport access charges from IXCs to subsidize high-volume calling services, which the Commission has found to be an unjust and unreasonable practice. Consistent with the Commission's previous efforts to eliminate this conduct, our proposals seek to reduce the routing of artificially high volumes of calls to places where above-cost access charges continue to exist. Our proposals will reduce the ability to apply access charges to those calls, the costs of which are ultimately borne by consumers, most of whom do not even use high-volume calling services.

### A. Proposed Rules When IPES Providers' Traffic Ratios Exceed the Access Stimulation Triggers

11. We seek comment on call paths involving Intermediate Access Providers, LECs, and IPES Providers. As an initial matter, we seek comment on whether the following diagram accurately illustrates how calls are delivered to high-volume calling service providers by IPES Providers that receive those calls from LECs. If not, how should the diagram be modified to make it more accurate? We encourage commenters to submit diagrams and explanations in the record to provide a more comprehensive and clearer understanding of the flow of traffic to high-volume calling service providers when an IPES Provider is inserted into the call flow. We strongly encourage parties to submit simple diagrams showing all providers in the call path to illustrate and help clarify the various calling scenarios that our proposals to combat access stimulation should target.

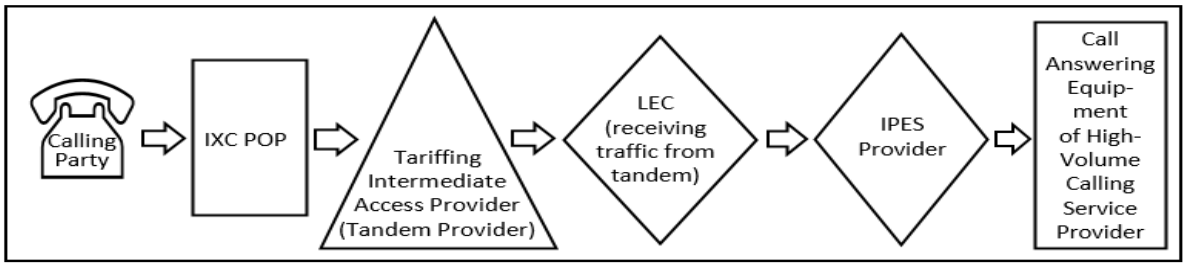


**Diagram 1:** Hypothetical call path including a LEC and an IPES Provider

12. We also seek information on the providers' services (tariffed and non-tariffed) and the access charges involved in routing these calls. When traffic is routed from an Intermediate Access Provider to a LEC as in Diagram 1, is that LEC at times the same entity that serves as the Intermediate Access Provider? In what circumstances? Commenters should enumerate each of the services provided by the Intermediate Access Provider, the LEC, and IPES Provider along this call path and which entities are charged for each service. For instance, when the LEC sends calls to the IPES Provider in the call path, is the LEC providing transport or other services? If the LEC delivers these calls to the IPES Provider, is the LEC providing any end-office functionality? When traffic is exchanged between the LEC and the IPES Provider, how is compensation, if any, handled between the two entities? What other services does the LEC charge for? Does the IPES Provider charge any entity in the call path for any services? If so, what services are provided by the IPES Provider, and which entity does the IPES Provider charge? Parties should provide any additional information that will enhance our understanding of how calls are routed and billed for along the hypothetical call path in Diagram 1, so we can better assess whether entities are meeting their financial responsibilities when they route traffic in this manner.

13. The record suggests that there are call flows that do not include a LEC between the Intermediate Access Provider and the IPES Provider (or the end user), as pictured in Diagram 2 below. In this scenario, the Intermediate Access Provider (tandem provider) delivers calls directly to an IPES Provider without an intermediate LEC. We seek comment on the existence of such call flows. Does Diagram 2 below accurately depict such call flows? If not, what

adjustments need to be made to the diagram to make it more accurate?

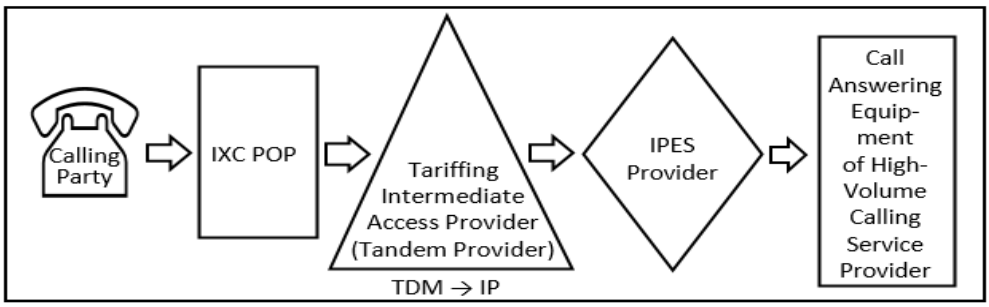


**Diagram 2:** Hypothetical call path where the Intermediate Access Provider sends traffic directly to the IPES Provider

14. IPES Providers are not "LECs" and thus parties may argue that our Access Stimulation Rules do not apply to them, whether traffic they terminate to high-volume calling service providers is received directly from Intermediate Access Providers or from LECs. This argument, however, leaves IXCs, who are captive to the routing decisions of IPES Providers that may choose Intermediate Access Providers solely to receive traffic they then deliver to the high-volume calling service provider, having to bear the cost of those routing decisions. These costs are ultimately passed onto the IXCs' customers. These schemes are similar to those that existed before the *Access Arbitrage Order* was adopted, where access-stimulating LECs had no incentive to make economical routing decisions because the cost implications of those decisions would be borne by IXCs who would pass the resultant inflated costs on to their customer bases.

15. For example, in response to the *Access Arbitrage Order*, one competitive LEC, Wide Voice, modified its business to no longer offer service to end users, and instead only functions as a competitive tandem provider and sends call destined for a high-volume calling service to HD Carrier (an IPES provider), which then terminates calls to the end user. The Commission found that Wide Voice's actions resulted in it continuing to unlawfully bill IXCs for tandem services contrary to section 201(b) of the Act. Commenters should describe additional real-world examples of calls being routed from an Intermediate Access Provider directly to an IPES Provider (or indirectly through a LEC) that then terminates those calls to a high-volume calling

service provider. Does this routing scheme impose unlawful costs on IXCs? We seek additional detail on this practice and specific proposals as to how best it should be addressed. Parties should explain what charges are being assessed, what entity is billing for what services, and which parties are being charged in these situations. Commenters should likewise describe any other aspects of this call flow that might provide additional opportunities for arbitrage and suggest ways our rules might be revised to foreclose those opportunities.

16. *Proposal*. We propose to clarify that an Intermediate Access Provider shall not charge an IXC tariffed charges for terminating switched access tandem switching and switched access tandem transport for traffic bound to an IPES Provider whose traffic exceeds the ratios in sections 61.3(bbb)(1)(i) or 61.3(bbb)(1)(ii) of our Access Stimulation Rules. We seek comment on this proposal, including the question of whether it is appropriate to apply to IPES Providers the 3:1 terminating-to-originating traffic ratio plus revenue sharing agreement trigger in section 61.3(bbb)(1)(i), and the 6:1 terminating-to-originating traffic ratio trigger, absent a revenue sharing agreement, in section 61.3(bbb)(1)(ii). Commenters should consider that although we intend to reduce or eliminate arbitrage opportunities, we do not want the financial consequences of our Access Stimulation Rules to apply to LECs or IPES Providers that are not engaged in harmful arbitrage schemes.

17. Under our proposal, the IPES Provider would be responsible for calculating its traffic ratios and for making the required notifications to the Commission and affected carriers, just as LECs are responsible for these activities under the current rules. This proposal is consistent with other reporting requirements imposed on VoIP providers, such as the obligation to report certain information on FCC Forms 477 and 499. Similar to the approach the Commission took in the *Access Arbitrage Order*, we do not propose a specific format for the notification an access-stimulating IPES Provider would provide to affected carriers and the Commission. After the rules adopted in the *Access Arbitrage Order* became effective, some carriers satisfactorily notified the Commission that they were stopping their access stimulation activities by filing

letters in docket 18-155.

18. Under our proposal, if the IPES Provider's traffic ratios exceed the applicable rule triggers, it would have to notify the Intermediate Access Provider, the Commission, and affected IXCs. The Intermediate Access Provider would then be prohibited from billing IXCs tariffed rates for terminating switched access tandem switching or terminating switched access transport charges. Instead, the Intermediate Access Provider could recover the costs from the IPES Provider, or the IPES Provider's LEC partner. Thus, the entities choosing the call path—the IPES Provider or its partner—should only be willing to generate traffic that creates more value than the costs these tariffed access charges are intended to recover. As a result, they would have an economic incentive to make efficient call routing decisions and little, if any, incentive to artificially stimulate traffic. Do commenters agree with our view that this proposal, reflected in the amended rules, will help "ensure that the entities choosing what network to use . . . have appropriate incentives to make efficient decisions"? If commenters disagree, they should explain what other, or additional, actions we should take to ensure that service providers have the proper incentives.

19. As an alternative to imposing a requirement that the IPES Provider calculate its traffic ratios for purposes of our Access Stimulation Rules, we could require that the Intermediate Access Provider calculate the IPES Provider's traffic ratios. Under this alternative, if the Intermediate Access Provider cannot perform this calculation, or the IPES Provider will not share relevant traffic ratio information with the Intermediate Access Provider, we would create a presumption that the IPES Provider's traffic exceeds the Access Stimulation Rule ratios. In that case, the Intermediate Access Provider would not be able to charge IXCs terminating switched access tandem switching or terminating switched access transport charges. Would such an approach be more effective than the rule modifications described above and proposed? Commenters are encouraged to propose possible rule language to codify this presumption.

20. We propose to use the same framework for determining when an IPES Provider that was engaged in access stimulation no longer is considered to be engaged in access stimulation that we currently use for competitive LECs that have engaged in access stimulation. Thus, for example, if an IPES Provider is engaged in access stimulation because it exceeds the 6:1 traffic ratio in section 61.3(bbb)(1)(ii) of the Commission's rules, we propose that it would no longer be considered to be engaged in access stimulation if its traffic ratio falls below 6:1 for six consecutive months and it does not engage in Access Stimulation as defined in section 61.3(bbb)(1)(i). Additionally, once such an IPES Provider no longer meets those criteria, it would be required to notify the Commission and any affected Intermediate Access Providers and IXCs that it is no longer engaged in access stimulation. We seek comment on these proposals. Do commenters consider the proposals to be over-inclusive or unnecessary? If so, are there ways to moderate the proposals to effect the same objective?

21. *Calculations*. We propose that IPES Providers would be responsible for calculating traffic ratios. Parties should describe any possible challenges that may affect the ability of an IPES Provider to perform the calculations needed to determine whether it meets the triggers established by the Access Stimulation Rules. Commenters should also explain if any of those challenges are so significant as to make our proposal unworkable. If so, we ask those commenters to propose alternatives that pose fewer challenges but still achieve our goals of removing the incentives for entities to engage in wasteful arbitrage and the imposition of unlawful charges on IXCs and their customers.

22. The Access Stimulation Rules currently require traffic ratios to be calculated on the basis of traffic "in an end office" for the purposes of determining whether the 6:1 and 10:1 traffic ratios are exceeded. We propose rule modifications to apply this same method to the 3:1 traffic ratio and when IPES Providers calculate traffic ratios for purposes of the Access Stimulation Rules. Would there be a benefit to making the Access Stimulation Rules uniform between LEC obligations and IPES Provider obligations? For example, does the inconsistent application of the

"in an end office" requirement in the current rules cause confusion or opportunities for arbitrage? We also propose that the traffic ratios in our Access Stimulation Rules all be based on terminating-to-originating traffic measured "in an end office or equivalent." To apply these requirements to an IPES Provider, what guidance should we provide as to what would be considered "equivalent" to a LEC's end office? For example, when an IPES Provider is inserted in the call flow, should wherever the Intermediate Access Provider sends traffic be considered the "end office or equivalent"? Does the Commission's holding in the *VoIP Symmetry Declaratory Ruling* that a VoIP provider will be providing end office functionality "equivalent" to a LEC when it provides the physical connection to the end user have any application here?

23. Alternatively, should IPES Providers be required to calculate their traffic ratios based on the traffic the IPES Provider terminates in a specific state or to a specific end user? Is there some other method of calculation that would better aid us in identifying access stimulation for the purposes of our Access Stimulation Rules? Should IPES Providers calculate their traffic ratios in a manner that mirrors the geographic area served by the LEC's end office, or by specific LATAs? Should we require IPES Providers to calculate their traffic ratios based on the traffic they receive from a specific Intermediate Access Provider? Are there other alternatives we should consider? Which approach would best support the effectiveness of our Access Stimulation Rules, ensure that all providers in a call flow have the proper economic incentives to promote efficiency, and eliminate harmful arbitrage opportunities? Commenters should submit any data they have that support a particular approach or that show the relative benefits of one approach versus another.

24. We also seek comment on any challenges related to our alternative proposal of requiring that the Intermediate Access Provider calculate the IPES Providers' traffic ratios. Would an Intermediate Access Provider know, or have access to, the information necessary to determine the terminating-to-originating traffic ratios of IPES Providers to which it delivers and from which it receives traffic? Would tracking the originating and terminating traffic of

individual IPES Providers be unduly burdensome for Intermediate Access Providers? What if the Intermediate Access Provider delivers traffic along multiple call paths and needs to calculate the traffic ratios for an IPES Provider for each call path? For example, do providers send originating and terminating traffic on different call paths when they partner with multiple LECs or other IPES Providers? Does an IPES Provider designate different traffic routes in the Local Exchange Routing Guide (LERG), such that it may select one LEC for the purposes of receiving local traffic, but receives long-distance traffic from a different access tandem to avoid having incoming long-distance and local traffic traverse the same LEC's facilities? Are there reasons, other than promoting access arbitrage, for an IPES Provider to use more than one route for terminating traffic? If so, we ask commenters to explain those specific reasons.

25. *Implementation*. What implementation issues do our proposals raise? How much time would providers need to comply with the proposed rule changes? In the *Access Arbitrage Order*, the Commission gave carriers 45 days to come into compliance with the newly effective rules. Anticipating that IPES Providers would not need longer to comply than carriers did, we also propose a 45-day period for compliance after the effective date of the revised rules. Is this sufficient? Do interested parties foresee difficulties that would affect the time it will take to comply with the revised rules? Commenters should include suggested timeframes for implementation and an explanation of any challenges or concerns relating to coming into compliance with our proposed rules within a 45-day period. If 45 days are insufficient, how long should the transition period last, what steps would it include, and why is more time necessary now than was needed at the time the Commission adopted the *Access Arbitrage Order*? If proposing an alternative timeframe, we remind interested parties to balance any proposed implementation period with the fact that the longer the implementation period lasts, the longer these forms of wasteful access arbitrage continue.

26. *Revenue Sharing.* The reforms adopted in the 2011 *USF/ICC Transformation Order* focused on revenue sharing agreements between the terminating LEC and end users or other

providers along the call path that provided incentives for improper behavior. In the 2019 *Access Arbitrage Order*, the Commission adopted rules to identify and address access stimulation arrangements that did not include a revenue sharing component. As we work to further strengthen our rules to combat ongoing arbitrage, we seek comment on whether revenue sharing agreements exist in the call routing scenarios described above. For example, do IPES Providers share revenue with common carriers that transmit traffic to the IPES Providers or their customers? Do Intermediate Access Providers share their revenues with IPES Providers, high-volume calling service providers, or the high-volume calling service providers' end users?

27. Conversely, do high-volume calling service providers (or their end users) share revenue with LECs, Intermediate Access Providers, or IPES Providers? In any alternative call paths commenters describe in response to our questions in this Further Notice, we ask commenters to specify which entities, if any, could be or are sharing revenues with other entities. We are particularly interested in what makes certain call paths—or call path manipulations—attractive to those involved. For example, what entities are sharing revenues right now? What functions do those entities serve in completing calls, and whose revenues are being shared with others? We propose modifying the existing definition of Access Stimulation in section 61.3(bbb) to include IPES Providers with or without access revenue sharing agreements, similar to the approach that currently applies to competitive LECs. Are ongoing revenue sharing arrangements covered effectively by the current Access Stimulation Rules? If not, what additional rule revisions are needed to capture today's revenue sharing arrangements? Is there specific rule language commenters would propose to address revenue sharing arrangements that may not be covered by our current rules?

### B. Other Proposed Rule Changes

28. We seek comment on several additional rule change proposals. Are the proposed rule changes below necessary, or helpful, to the goal of eliminating harmful arbitrage? Would they, in concert with the other rule changes proposed in this Further Notice, help to comprehensively

address arbitrage of our intercarrier compensation system?

29. *End User and End Office Language*. AT&T suggests that clarifications to the "end user" and "end office" language in the existing rules will prevent LECs from evading financial responsibility for access-stimulation traffic when an IPES Provider is inserted into the call path. First, AT&T suggests that we clarify the meaning of "end user" in section 61.3(bbb)(1) of our rules, which defines when carriers engage in access stimulation, by adding the italicized language, as follows.

> A Competitive Local Exchange Carrier serving end user(s) engages in Access Stimulation when it satisfies either paragraph (bbb)(1)(i) or (ii) of this section; and a rate-of-return local exchange carrier serving end user(s) engages in Access Stimulation when it satisfies either paragraph (bbb)(1)(i) or (iii) of this section. *For purposes of this section, a Local Exchange Carrier is serving end users when it provides service to a called or calling party, either directly or through arrangements with one or more VoIP providers or other entities that serve called or calling parties. For purposes of this section, a Local Exchange Carrier is not serving end users when it is an Intermediate Access Provider as defined in paragraph (ccc) of this section, i.e., when it is not the first or last LEC in the routing of a call to a called or calling party*.

30. We seek comment on this proposed amendment to our existing rule. Would the proposed language effectively remedy any perceived ambiguity that parties have sought to exploit in our current rules? Would the proposed language lead to any potentially unintended consequences that we should consider? Do commenters propose any revisions to this language? Would this rule modification successfully prevent LECs from avoiding financial responsibility for access-stimulation traffic when IPES Providers are in the call path? Are there considerations that would weigh against such a rule modification or in favor of some other modification(s) to

this rule? Are the proposed rule modifications sufficient to address the concerns that AT&T intends to address with this proposed rule change? Alternatively, should we delete the "serving end user(s)" phrase from section 61.3(bbb)(1) of our rules? Would doing so be a simpler approach to address this perceived ambiguity? Or, should we add the phrase "serving end users" to sections 61.3(bbb)(2) and 61.3(bbb)(3)? Would there be a benefit to making the rules consistent? Would there be any detrimental effects from doing so?

31. Secondly, AT&T proposes that we modify section 61.3(bbb)(1)(ii) of our existing rules to remove the reference to traffic calculations "in an end office" and revise how the access-stimulation traffic ratio is computed for LECs that provide numbers or interconnection to IPES Providers, as follows. The italicized language represents what would be added.

> A Competitive Local Exchange Carrier has an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month. *For any Competitive Local Exchange Carrier that provides numbers or interconnection to a VoIP provider, the LEC is engaged in access stimulation for purposes of that VoIP provider's traffic when that VoIP provider has an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month.*

32. Should we adopt this proposal? Would removing the language "in an end office" better accomplish our goal of providing clarity and understanding of our rules? Does the deletion of "in an end office" recognize, as AT&T suggests, that arbitrage schemes no longer target end office charges? Under this proposed approach, should the LEC be responsible for calculating the traffic ratios of the IPES Provider? If the LEC delivers traffic to multiple IPES Providers, should the LEC calculate a traffic ratio for each individual IPES Provider separately? Alternatively, should we maintain the "in the end office" language in section 61.3(bbb)(1)(ii) and (iii), and add it to section 61.3(bbb)(1)(i)? Would making the rules consistent in this manner

reduce the opportunity for continued arbitrage of the ICC system?

33. *Treat IPES Providers as LECs for Purposes of the Access Stimulation Rules*. We also seek comment on a proposal submitted by Inteliquent and Lumen, suggesting that the Commission could, as an alternative to adopting new rules, "issue a declaratory ruling clarifying that IPES providers are treated as LECs for the purpose of the access stimulation rules." Inteliquent and Lumen argue that "[t]o the extent an IPES provider's ratio of terminating to originating traffic meets the triggers, it should be deemed to be engaged in access stimulation just like a traditional LEC," because "the IPES provider both functions like a LEC for the purposes of the access stimulation rules and necessarily has visibility into its own access traffic." According to Inteliquent, a LEC that provides interconnection to an IPES Provider serves only as a conduit for delivery of local traffic and has no insight into the IPES Provider's long-distance traffic volumes. Therefore, Inteliquent contends, it would be inappropriate to make the LEC responsible for the IPES Provider's traffic volumes. We seek comment on this suggestion. How relevant are other situations in which the Commission has applied certain regulations to VoIP providers? IPES Providers have the ability to obtain direct access to numbers. Could the Commission condition the ability of an IPES Provider to obtain direct access to numbers on an agreement by the provider to voluntarily subject itself to our Access Stimulation Rules? How would doing so affect our efforts to eliminate access arbitrage?

34. What rule changes would be necessary were we to decide to implement the proposal to issue a declaratory ruling to treat IPES Providers as LECs for purposes of the Access Stimulation Rules? For example, would we need to add a definition of "LEC" to our Access Stimulation Rules that would include IPES Providers solely for the purpose of compliance with the Access Stimulation Rules? Are the proposed rules sufficient to address Inteliquent and Lumen's concerns that IPES Providers are being used to avoid the application of the Access Stimulation Rules and to allow the continued unlawful charging of IXCs? If not, what specific language do commenters suggest to help address these concerns or further the Commission's

goal of eliminating harmful access arbitrage?

35. As an addition or alternative to their declaratory ruling proposal, Inteliquent and Lumen suggest that "the Commission could declare that it is an inherently unjust and unreasonable practice for a party to attempt to evade the access arbitrage rules by moving LEC end office traffic to an affiliated IPES provider, where the traffic in question otherwise would have caused the LEC to be engaged in access stimulation under the rules." We seek comment on this idea. What are the relevant considerations of such an approach? Would such an approach be overly broad? Would this approach efficiently capture improper behavior? The Commission has repeatedly resisted an outright ban on access stimulation. Would doing as Inteliquent and Lumen suggest effectively be a ban on access stimulation?

36. *Interstate/Intrastate Language*. The Commission made clear in the 2019 *Access Arbitrage Order* that the rules adopted to combat access stimulation were intended to prohibit access-stimulating entities from unlawfully billing IXCs for intrastate terminating switched access tandem switching or terminating switched access transport, bound for access-stimulating LECs, in addition to such interstate traffic. However, that language was not reflected in the text of the rules, only in the text of the Order. We now propose to codify, in sections 69.4(l), and 69.5(b) of our rules that IXCs shall not be billed for interstate or intrastate terminating switched access tandem switching or terminating switched access transport. Would making these amendments facilitate enforcement of our Access Stimulation Rules? Are there other benefits in making these changes? Are any other amendments to these or other sections of our rules needed to fully and accurately capture the text of the *Access Arbitrage Order*?

37. *IPES Provider Definition*. We propose to define an "IPES Provider," for purposes of our Access Stimulation Rules, as:

> *IPES Provider* means, for purposes of this part and §§ 51.914, 69.4(l) and 69.5(b) of this chapter, a provider offering a service that: (1) enables real-time, two-way

> voice communications; (2) requires a broadband connection from the user's location or end to end; (3) requires Internet Protocol-compatible customer premises equipment (CPE); and (4) permits users to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network or that originate from an Internet Protocol service and terminate to an Internet Protocol service or an Internet Protocol application.

38. Parties have suggested using the term "IPES Provider" when referring to the provider being inserted in the place of the "LEC serving end users" as used in the Access Stimulation Rules. For example, Inteliquent suggests that IPES is "an industry term commonly used for VoIP providers that have received direct access to numbers, and it originates from the company code (OCN) type assigned to these providers by NECA [(National Exchange Carrier Association)]." AT&T suggests that "IPES providers are entities that, among other things, provide or facilitate Over the Top VoIP calling services, including '2-stage' International calling services." Do commenters agree with either of these definitions? We also seek comment on the definition proposed above, which is limited in its application to the Access Stimulation Rules. USTelecom suggests that our proposed "IPES Provider" definition not require two-way calling or the termination of calls. Do commenters agree that we should modify the proposed definition as USTelecom suggests? Are there other alternative definitions of "IPES Provider" that commenters would suggest we use for purposes of our Access Stimulation Rules? What are the important functions or concepts this definition should capture? Would limiting our definition of "IPES Providers" to providers that have received direct access to numbers, as Inteliquent suggests, limit the effectiveness of the Access Stimulation Rules? Would commenters suggest using an existing definition to describe these IPES Providers who are being inserted into the call path, such as "IP-enabled voice service" provider, as defined in section 615b(8) of the Act?

39. Alternatively, should we refer to these providers as "interconnected VoIP" providers, as defined in section 9.3 of our rules? Are there meaningful distinctions among these terms that

would make one defined term better than another for purposes of the Access Stimulation Rules? We propose a definition of "IPES Provider" to be used solely in the context of our Access Stimulation Rules. Despite our attempts to limit the use of this defined term, do we need to be concerned about potential confusion with other, similar, terms defined elsewhere in our rules? Will the proposed definition capture all providers that could be used to try to circumvent the Access Stimulation Rules?

40. *Intermediate Access Provider Definition*. An Intermediate Access Provider currently is defined in our rules as "any entity that carries or processes traffic at any point between the final Interexchange Carrier in a call path and a local exchange carrier engaged in Access Stimulation." Pursuant to our current Access Stimulation Rules, neither the Intermediate Access Provider nor the access-stimulating LEC shall bill an IXC for tariffed terminating switched access tandem switching and terminating switched access tandem transport charges for traffic between the Intermediate Access Provider and the access-stimulating LEC. In keeping with our other proposed rule modifications, we propose to amend the definition of Intermediate Access Provider to include any entity that "provides terminating switched access tandem switching and terminating switched access tandem transport services between the final Interexchange Carrier in a call path and: (1) a local exchange carrier engaged in Access Stimulation, as defined in paragraph (bbb) of this section; or (2) a local exchange carrier delivering traffic to an IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section; or (3) an IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section, where the Intermediate Access Provider delivers calls directly to the IPES Provider."

41. We seek comment on this proposed change to our definition of "Intermediate Access Provider." Inteliquent and Lumen state that "IPES providers designate a Hosting LEC for purposes of receiving *local* traffic" and that "[t]his designation does not apply to long distance traffic, which is the traffic subject to the *Access Arbitrage Order.*" Therefore, we seek input on whether the part of our proposed definition above that includes "a local exchange carrier

delivering traffic to an IPES Provider engaged in Access Stimulation" is necessary or how this part of the definition would otherwise be affected by what Inteliquent and Lumen describe in their filing. Do commenters suggest any other modifications to the definition? Are there services, other than terminating switched access tandem switching or terminating switched access tandem transport, that an Intermediate Access Provider might provide? If so, what are these services and who should be financially responsible for them?

42. *Conforming Edits to Our Rules*. Section 51.914(a)(2) of our rules presently states that a LEC shall designate, "if needed," the Intermediate Access Provider that will provide certain terminating access services to the LEC. This designation is applicable in cases where an Intermediate Access Provider is different than the end office LEC. We therefore propose changing "if needed" to "if any," so that the rule denotes a LEC shall designate an Intermediate Access Provider when and "if any" such designation is required. Not only is the "if any" language more accurate, but removing the "if needed" provision prevents any misconception that a LEC may otherwise subjectively decide on its own when such designation is needed. Regarding the designation of an Intermediate Access Provider by an IPES Provider, are there any instances when an IPES Provider is not required to designate an Intermediate Access Provider or when proposed sections 51.914(c)(1) and (d) would not be necessary?

43. Section 69.4(l) of the Commission's rules requires that a LEC engaged in access stimulation "may not bill" IXCs terminating switched access tandem switching or terminating switched access tandem transport charges for access-stimulation traffic. Yet, in the *Access Arbitrage Order*, the Commission made clear that it is unlawful for a LEC engaged in access stimulation to charge an IXC terminating switched access tandem switching or terminating switched access tandem transport charges. We propose edits to section 69.4(l) of our rules to make this rule consistent with the Commission's intent adopted in the *Access Arbitrage Order*; that a LEC engaged in access stimulation "shall not bill" IXCs for terminating switched access tandem switching or terminating switched access tandem transport charges on access-stimulation

traffic. Similarly, we also propose to correct an error in section 69.5(b)(2) of the Commission's rules that excluded the word "not," change the word "may" to "shall" to be consistent with other uses in these rules, and make clear that it is "IXCs" and not "local exchange carriers" that are not being charged.

44. We also seek comment on whether any rule changes proposed in this Further Notice introduce new opportunities for unlawful arbitrage. Would our proposed rule modifications accomplish our objectives of sending accurate pricing signals to customers by prohibiting Intermediate Access Providers that deliver traffic to IPES Providers that trigger the Access Stimulation Rules from charging IXCs for such calls? Would adopting our proposed rule changes create unintended consequences? For example, would any of the proposals introduce unnecessary complexity and present practical implementation challenges? If so, we seek comment on what exactly are the perceived complexities and implementation challenges related to the proposals in this Further Notice. Are there other types of access arbitrage happening today that are not described in this Further Notice? For example, are services that allow consumers to make long-distance calls to a domestic number and listen to foreign radio stations unfairly exploiting our access charge regime, as USTelecom suggests? Would these type of services be covered by our proposed rules? Or are they "one-way," as USTelecom argues? If so, what additional actions, if any, should we take to ensure our proposed rules address these types of services? We ask commenters to provide any other proposed actions, alternatives, and rule additions or modifications we should consider. Are there any other conforming rule changes that commenters consider necessary? Are there any conflicts or inconsistencies between existing rules and those we propose? Finally, we propose several non-substantive edits, to, among other things, enhance readability and ensure compliance with rule drafting guidelines applicable to the Code of Federal Regulations.

### C. Clarifying or Interpreting Current Access Stimulation Rules

45. *Applying the Existing Rules to IPES Providers*. As an alternative to modifying our

rules as proposed, we seek comment on whether it would be preferable for the Commission to issue a Declaratory Ruling interpreting the existing Access Stimulation Rules as applying to traffic routed from the PSTN through a LEC to an IPES Provider, or directly to the IPES Provider or to the end user, as parties have suggested since the rules first became effective. In the *Access Arbitrage Order*, the Commission explained that the access-stimulation traffic ratios are based on "the *actual* minutes traversing the LEC switch." Most relevant to the current discussion, the Commission clarified that "*all traffic* should be counted regardless of how it is routed." Indeed, the Commission emphasized this point several times in the *Access Arbitrage Order*. These explanations form the basis of arguments that "the *Access Arbitrage Order* already rejects" claims that traffic routed by LECs through an IPES Provider should not be counted for determining access-stimulation ratios. Is this a reasonable and accurate interpretation of the Commission's decision? Would issuing a declaratory ruling interpreting the Access Stimulation Rules as requested above adequately address any perceived lack of clarity in the existing rules identified in this Further Notice?

46. *Traffic to Be Counted.* AT&T argues that the Commission should clarify that, when calculating the traffic ratios for the purposes of our Access Stimulation Rules, a LEC "may not include aggregated originating 8YY traffic—particularly traffic that it obtains from VoIP providers—as part of its traffic ratio" because of the potential for arbitrage and fraud associated with the routing of 8YY traffic. The Commission previously identified certain forms of toll free or 8YY aggregation as a form of originating arbitrage and took steps to minimize that arbitrage. AT&T suggests that if a LEC "aggregate[s] 8YY traffic from VoIP providers that have obtained numbering authorization," the LEC "could begin routing access stimulation traffic from VoIP providers in the hope that, by engaging in *both* originating 8YY aggregation schemes *and* terminating access stimulation schemes, it could balance its terminating access stimulation traffic against its longstanding originating 8YY traffic and avoid hitting the Commission's triggers." We seek greater detail on this issue, as well as comment on the validity of AT&T's concerns. Is

this happening in the market now? If so, we ask commenters to propose rule revisions to address this issue. We also seek comment on any other issues regarding the treatment of originating 8YY traffic for purposes of calculating the traffic ratios related to the triggers in our Access Stimulation Rules. Would excluding such traffic alter carriers' ratios sufficiently so as to cause them to trigger our Access Stimulation Rules even though they are not engaging in arbitrage? Should a significant increase in a carrier's 8YY originating traffic be reported and treated as another trigger for our Access Stimulation Rules? Should 8YY traffic be included in those ratios? Why or why not? Should originating 8YY traffic be treated as terminating traffic for purposes of our Access Stimulation Rules?

### D. Legal Authority

47. We tentatively conclude that sections 201, 251, 254 and 256 of the Act provide us with the authority needed to adopt the rule changes proposed in this Further Notice. We seek comment on this authority, our ancillary authority in section 4(i) of the Act, and any other statutory authority that may support our proposed actions. We also seek comment on any concerns parties might have about our authority to adopt any of the proposals made in this Further Notice.

48. *Section 201 of the Act*. Our primary authority to adopt our proposed changes to the Access Stimulation Rules is section 201(b) of the Act. In the *Access Arbitrage Order*, the Commission determined that the imposition of tariffed tandem switching and tandem switched transport access charges on IXCs for terminating access-stimulation traffic is an unjust and unreasonable practice under section 201(b) of the Act. In our view, providers' attempts to continue to assess tandem switching or tandem switched transport access charges on IXCs for delivering access-stimulation traffic to IPES Providers is unjust and unreasonable pursuant to section 201(b) of the Act, and virtually indistinguishable from practices the Commission has already found to be unjust and unreasonable. We seek comment on this view. Section 201(b) of the Act gives us the authority to "prescribe such rules and regulations as may be necessary in the

public interest to carry out the provisions of this Act." We seek comment on whether this language provides us with the authority to require IPES Providers to designate the Intermediate Access Provider(s) that will provide terminating switched access tandem switching and transport services, to calculate their traffic ratios, and to notify Intermediate Access Providers, IXCs, and the Commission if the IPES Provider is engaged in Access Stimulation so that Intermediate Access Providers can determine whether they can lawfully charge IXCs for interstate and intrastate tandem services (and IXCs can determine if charges are appropriate). We also seek comment on our tentative conclusion that section 201(b) provides us the authority necessary to prohibit Intermediate Access Providers or other LECs from charging IXCs for access stimulation traffic routed through an IPES Provider, rather than through a LEC.

49. *Sections 251, 254, and 256 of the Act*. Our authority to take the actions proposed in this Further Notice is also rooted in other sections of the Act on which the Commission relied in the *Access Arbitrage Order*. First, section 251(b)(5) of the Act applies because our proposed new and modified rules apply, in large part, to exchange access and providers of exchange access that meet the definition of a LEC. Second, section 251(g) of the Act provides us with the authority to address problematic conduct which is occurring while the transition to bill-and-keep is not complete. Third, section 254 of the Act provides the Commission with the authority to eliminate implicit subsidies. Finally, section 256 of the Act requires the Commission to oversee and promote interconnection by providers of telecommunications services that is "efficient." We seek comment on the applicability of sections 201, 251, 254, and 256 of the Act to give us the authority to take the actions proposed herein.

50. *Section 4(i) of the Act.* Although we propose to conclude that our direct sources of authority identified above provide the basis to adopt our proposed rules, we also seek comment on whether our ancillary authority in section 4(i) of the Act provides an independent basis to adopt limited rules with respect to IPES Providers. We consider the proposed requirements to be "reasonably ancillary to the Commission's effective performance of [its] . . . responsibilities."

Specifically, IPES Providers interconnected with the PSTN and exchanging IP traffic clearly constitutes "communication by wire or radio." We seek comment on whether requiring IPES Providers to comply with our proposed limited rules is reasonably ancillary to the Commission's effective performance of its statutory responsibilities under sections 201(b), 251, 254, and 256 as described above.

### E. Costs and Benefits of the Proposals

51. Our intercarrier compensation regime continues to be an important source of funding for certain rural service providers, including providers of tandem switching, to ensure all Americans are connected. Access arbitrage exploits our intercarrier compensation regime to benefit activities and providers that our policies are not intended to benefit. This encourages further exploitation of our rules, threatening the basic goals of connectivity at just and reasonable prices, a cost that alone justifies our action. The excess payments made due to arbitrage also operate as an unnecessary tax on end users, shrinking the efficient use of telecommunications services. Further, because the party that chooses the call path does not pay that tax, it has incentives to engage in wasteful actions. Examples of this waste include:

- the pursuit of access arbitrage opportunities by routing traffic along more expensive call paths;
- artificial stimulation of traffic;
- disputes over questionable demands for payment by access stimulators;
- attempts by IXCs to identify the sources of fraudulent traffic; and
- time and money spent by parties seeking to protect against or reduce access arbitrage opportunities, as in this proceeding.

52. Costs incurred by these activities are not fully paid for by the consumers of high-volume calling services, who often pay nothing for these services. If consumers of these services were charged prices that wholly recovered the costs of arbitrage, then those who value the

service less than those prices would decline to purchase the service. This would reduce waste or equivalently create value equal to the difference between the cost-covering prices and these consumers' valuations of the service.

53. We recognize that any action we take to address ongoing access arbitrage may affect the costs and benefits to carriers and their customers and the choices they make, as they provide and receive telecommunications services. Consumers who enjoy high-volume calling services could be adversely affected by regulatory adjustments targeting arbitrage. Are there perceived benefits to access arbitrage or access stimulation? Would addressing access arbitrage as we propose unfairly advantage any competitor or class of competitors? If so, are there alternative means to address the arbitrage issues described here and presented in the record?

54. In the *USF/ICC Transformation Order*, the Commission considered direct costs imposed on consumers by arbitrage schemes. The Commission also found that access stimulation diverts capital away from more productive uses, such as broadband deployment. There is also evidence that the staggering volume of minutes generated by these schemes can result in call blocking and dropped calls. What has been the effect of the 2019 revisions to the Access Stimulation Rules? Are there additional, more-recent data available to estimate the annual cost of arbitrage schemes to companies, long-distance customers, and consumers in general? Likewise, are there data available to quantify the resources being diverted from more productive uses because of arbitrage schemes? To what degree are consumers indirectly affected by potentially inefficient networking or incorrect pricing signals due to ongoing access stimulation? Has competition been negatively impacted because "access-stimulation revenues subsidize the costs of high-volume calling services, granting providers of those services a competitive advantage over companies that collect such costs directly from their customers?" Are there other costs or benefits to the proposals in this Further Notice that we should consider?

### F. Efforts to Promote Digital Equity and Inclusion

55. The Commission, as part of its continuing effort to advance digital equity for all,

including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

## III. PROCEDURAL MATTERS

56. *Filing Instructions*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

  Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.
    - During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.
    - After COVID-19 restrictions are lifted, the Commission has established that hand-carried documents are to be filed at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701. This will be the only location where hand-carried paper filings for the Commission will be accepted.

57. *People with Disabilities*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

58. *Ex Parte Requirements*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are

reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

59. *Paperwork Reduction Act Analysis*. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

60. *Initial Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility

Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Further Notice and the IRFA (or summaries thereof) will be published in the *Federal Register*.

### A. Need for, and Objectives of, the Proposed Rules

61. For many years the Commission has been fighting efforts to arbitrage its system of intercarrier compensation. In the 2011 *USF/ICC Transformation Order*, the Commission adopted rules identifying local exchange carriers (LECs) engaged in access stimulation and requiring that such LECs lower their tariffed access charges. In 2019, to address access arbitrage schemes that persisted despite prior Commission action, the Commission adopted the *Access Arbitrage Order*, in which it revised its Access Stimulation Rules to prohibit LECs and Intermediate Access Providers from charging interexchange carriers (IXCs) for terminating tandem switching and transport services used to deliver calls to access-stimulating LECs. The revised rules were adopted to end the ability of LECs to engage in arbitrage of the intercarrier compensation system by extracting artificially inflated tandem switching and transport charges from IXCs to subsidize "free" high-volume calling services.

62. Since the 2019 rules took effect, the Commission has received information about new ways carriers are manipulating their businesses to continue their arbitrage schemes in the wake of the new rules. In the Further Notice, we seek comment on ways to address perceived loopholes in our rules that companies may be exploiting and to eliminate these new arbitrage schemes and the harms those schemes inflict on consumers. The rules we propose will serve the public interest by reducing carriers' incentives and ability to send traffic over the Public

Switched Telephone Network solely for the purpose of collecting tariffed tandem switching and transport access charges from IXCs to subsidize high-volume calling services, which the Commission has found to be an unjust and unreasonable practice.

63. We propose to modify our Access Stimulation Rules to address access arbitrage that takes place when an Internet Protocol Enabled Service (IPES) Provider is incorporated into the call flow. We propose that when a LEC or Intermediate Access Provider delivers traffic to an IPES Provider and the terminating-to-originating traffic ratios of the IPES Provider exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation. In such cases, we propose prohibiting an Intermediate Access Provider from charging an IXC tariffed charges for terminating switched access tandem switching and switched access transport for traffic bound to an IPES Provider whose traffic exceeds the ratios in sections 61.3(bbb)(1)(i) or 61.3(bbb)(1)(ii) of our Access Stimulation Rules. We propose that the IPES Provider be responsible for calculating its traffic ratios and for making the required notifications to the Intermediate Access Provider and the Commission. We likewise propose modifying the definition of Intermediate Access Provider to include entities delivering traffic to an IPES Provider.

64. We propose to use the same framework for determining when an IPES Provider that was engaged in access stimulation no longer is considered to be engaged in access stimulation, that we currently use for competitive LECs that have engaged in access stimulation. The Access Stimulation Rules currently require traffic ratios to be calculated at the end office. We propose rule modifications to apply this manner of traffic calculations to IPES Providers as well and that any final rules that are adopted will be effective 45 days after publication in the Federal Register.

### B. Legal Basis

65. The legal basis for any action that may be taken pursuant to the Further Notice is contained in sections 1, 2, 4(i), 201, 251, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 251, 254, 256, 303(r), and 403, and

section 1.1 of the Commission's rules, 47 CFR 1.1.

### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

66. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

67. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

68. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

69. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."

70. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

71. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020,

there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

72. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

73. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020,

there were 1,227 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

74. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

75. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the

Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

76. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

77. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only five have more than 400,000 subscribers. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than

15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

78. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice. Based on industry data, only four cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

79. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of Internet services (e.g., dial-up ISPs) or voice over Internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.

U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

### D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

80. In the Further Notice, we propose and seek comment on rule changes that will affect LECs, Intermediate Access Providers, and IPES Providers. We propose to modify our Access Stimulation Rules to address arbitrage which takes place when an IPES Provider is incorporated into the call flow. In the Further Notice, we propose rules to further limit or eliminate the occurrence of access arbitrage, including access stimulation, which could affect potential reporting requirements. The proposed rules also contain recordkeeping, reporting and third-party notification requirements for access-stimulating LECs and IPES Providers, which may impact small entities. Some of the proposed requirements may also involve tariff changes.

81. We propose that when a LEC delivers traffic to an IPES Provider and the terminating-to-originating traffic ratios of the IPES Provider exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation. We propose that the IPES Provider be responsible for calculating its traffic ratios and for making the required third-party notifications. As such, providers may need to modify their in-house recordkeeping to comply with the proposed rules. Under our proposal, if the IPES Provider's ratios exceed the applicable rule triggers, it would have to notify the Intermediate Access Provider, the Commission, and affected IXCs. The Intermediate Access Provider would then be prohibited from charging IXCs tariffed rates for terminating switched access tandem switching or terminating switched access transport charges.

82. Our proposals may also require affected LECs and Intermediate Access Providers to file tariff revisions to remove any tariff provisions they have filed for terminating tandem

switched access or terminating switched access transport charges. Although we decline to opine on whether our proposals may require carriers to file further tariff revisions, affected carriers may nonetheless choose to file additional tariff revisions to add provisions allowing them to charge access-stimulating LECs or access-stimulating IPES Providers, rather than IXCs, for the termination of traffic.

83. As an alternative to imposing a measurement requirement on the IPES Provider, we seek comment on requiring that the Intermediate Access Provider calculate the IPES Provider's traffic ratios for purposes of our Access Stimulation Rules. If adopted, this proposal could impose recordkeeping, reporting, and third-party notification requirements on Intermediate Access Providers. Under this alternative proposal, if the Intermediate Access Provider cannot perform this calculation, or the IPES Provider will not share relevant traffic ratio information with the Intermediate Access Provider, the Intermediate Access Provider would not be able to charge IXCs terminating switched access tandem switching or terminating switched access transport charges.

84. Our proposals may also necessitate that affected carriers make various revisions to their billing systems. For example, Intermediate Access Providers that serve LECs with access-stimulating IPES Providers in the call path (or that deliver traffic directly to an IPES Provider when no LEC is in the call path) will no longer be able to charge IXCs terminating tandem switched access rates and transport charges. As Intermediate Access Providers cease billing IXCs they will likely need to make corresponding adjustments to their billing systems.

85. In the Further Notice, we also seek comment on other actions we could take to further discourage or eliminate access arbitrage activity. Rules which achieve these objectives could potentially affect recordkeeping, reporting, and third-party notification requirements.

### E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

86. The RFA requires an agency to describe any significant alternatives that it has

considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. We expect to consider all of these factors when we receive substantive comment from the public and potentially affected entities.

87. In this Further Notice, we invite comment on a number of proposals and alternatives to modify our Access Stimulation Rules. The Commission has found these arbitrage practices inefficient and to ultimately increase consumer telecommunications rates. Therefore, in the Further Notice, we propose rules to further limit or eliminate the occurrence of access stimulation in turn promoting the efficient function of the nation's telecommunications network. We believe that if companies are able to operate with greater efficiency this will benefit the communications network as a whole, and its users, by allowing companies to increase their investment in broadband deployment.

88. Thus, we propose to adopt rules to address arbitrage which takes place when an IPES Provider is incorporated into the call flow. We propose that when a LEC delivers traffic to an IPES Provider and the terminating-to-originating traffic ratios of the IPES Provider exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation. In such cases, we propose that the Intermediate Access Provider would be prohibited from imposing tariffed terminating tandem switching and transport access charges on IXCs sending traffic to an IPES Provider or the IPES Provider's end-user customer. As an alternative to imposing a measurement requirement on the IPES Provider, we could require that the Intermediate Access Provider calculate the IPES Provider's traffic ratios for purposes of our Access Stimulation Rules. Under this alternative proposal, if the Intermediate Access Provider

cannot perform this calculation, or the IPES Provider will not share relevant traffic ratio information with the Intermediate Access Provider, we would create a presumption that the IPES Provider's traffic exceeds the Access Stimulation Rule ratios. In that case, the Intermediate Access Provider would not be able to charge IXCs terminating switched access tandem switching or terminating switched access transport charges.

89. We also seek comment on whether IPES Providers should be treated as LECs for the purpose of our Access Stimulation Rules. We received a proposal in the record that the Commission should "issue a declaratory ruling clarifying that IPES Providers are treated as LECs for the purpose of the access stimulation rules." We seek interested parties' opinion on whether adopting such a proposal would be more or less burdensome on small businesses.

90. In the Further Notice, we also propose to require carriers to comply with any adopted rules within 45 days. We seek comment on this time period and whether interested parties foresee difficulties that would affect the time it will take to comply with the revised rules. We expect that time period will allow even small entities adequate time to amend their tariffs, if needed, and meet the requirements in the proposed rules.

91. Comment is sought on how best to address access arbitrage activities. In the Further Notice, we seek comment on the costs and benefits of these proposals. Providing carriers, especially small carriers, with options will enable them to best assess the financial effects on their operations allowing them to determine how best to respond. We invite comment on how our proposals may affect the costs and benefits to carriers and their customers and the choices they make, as they provide and receive telecommunications services. We invite commenters to quantify both the costs and the benefits of our proposals and of any alternative approaches to reducing access stimulation activities.

92. We expect to consider the economic impact on small entities, as identified in comments filed in response to the Further Notice and this IRFA, in reaching our final

conclusions and promulgating rules in this proceeding. The proposals and questions laid out in the Further Notice are designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different proposed actions.

### F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

93. None.

94. *Contact Person*. For further information about this proceeding, please contact Lynne Engledow, FCC Wireline Competition Bureau, Pricing Policy Division, 45 L Street, NE, Washington, D.C. 20554, 202-418-1520, Lynne.Engledow@fcc.gov.

## IV. ORDERING CLAUSES

95. Accordingly, it is ordered, pursuant to sections 1, 2, 4(i), 201, 251, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 251, 254, 256, 303(r), and 403 and section 1.1 of the Commission's rules, 47 CFR 1.1, this Further Notice of Proposed Rulemaking is adopted.

96. It is further ordered that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Further Notice of Proposed Rulemaking on or before 30 days after publication of this Further Notice of Proposed Rulemaking in the *Federal Register*, and reply comments on or before 60 days after publication of this Further Notice of Proposed Rulemaking in the *Federal Register.*

97. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

**47 CFR Part 51**

Interconnection.

Communications; Communication common carriers; Telecommunications; Telephone

**47 CFR Part 61**

Tariffs.

Communication Common Carriers; Radio; Reporting and recordkeeping requirements; Telegraph; Telephone

**47 CFR Part 69**

Access Charges.

Communications common carriers; Reporting and recordkeeping requirements; Telephone

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary.

## PROPOSED RULES

For the reasons set forth, the Federal Communications Commission proposes to amend 47 CFR parts 51, 61 and 69 as shown below.

**PART 51—INTERCONNECTION**

1. The authority citation for part 51 continues to read as follows:

**Authority:** 47 U.S.C. 151-55, 201-05, 207-09, 218, 225-27, 251-52, 271, 332 unless otherwise noted.

2. Amend § 51.903 by adding paragraph (q) to read as follows:

**§ 51.903 Definitions.**

* * * * *

(q) IPES Provider has the same meaning as that term is defined in § 61.3(eee) of this chapter.

3. Amend § 51.914 by revising paragraphs (a) through (e) and adding paragraphs (f) and (g) as follows:

**§ 51.914 Additional provisions applicable to Access Stimulation traffic.**

(a) Notwithstanding any other provision of this part, if a local exchange carrier is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of **[30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, whichever is later:

(1) Not bill any Interexchange Carrier for interstate or intrastate terminating switched access tandem switching or terminating switched access transport charges for any traffic between such local exchange carrier's terminating end office or equivalent and the associated access tandem switch; and

(2) Designate the Intermediate Access Provider(s), if any, that will provide

terminating switched access tandem switching and terminating switched access tandem transport services to the local exchange carrier engaged in Access Stimulation; and

(3) Assume financial responsibility for any applicable Intermediate Access Provider's charges for such services for any traffic between such local exchange carrier's terminating end office or equivalent and the associated access tandem switch.

(b) Notwithstanding any other provision of this part, if a local exchange carrier is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of **[30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and Interexchange Carriers with which it does business of the following:

(1) That it is a local exchange carrier engaged in Access Stimulation; and

(2) That it shall designate the Intermediate Access Provider(s) that will provide the terminating switched access tandem switching and terminating switched access tandem transport services to the local exchange carrier engaged in Access Stimulation; and

(3) That the local exchange carrier shall pay for those services as of that date.

(c) Notwithstanding any other provision of the Commission's rules, if an IPES Provider, as defined in § 61.3(eee) of this chapter, is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of **[30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, whichever is later:

(1) Designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching and terminating switched access tandem transport services to the IPES Provider engaged in Access Stimulation; and further

(2) The IPES Provider may assume financial responsibility for any applicable Intermediate Access Provider's charges for such services for any traffic between such IPES Provider's terminating end office or equivalent and the associated access tandem switch, and

(3) The Intermediate Access Provider shall not assess any charges for such services to the Interexchange Carrier.

(d) Notwithstanding any other provision of the Commission's rules, if an IPES Provider, as defined in § 61.3(eee) of this chapter, is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of **[30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and Interexchange Carriers with which it does business of the following:

(1) That it is an IPES Provider engaged in Access Stimulation; and

(2) That it shall designate the Intermediate Access Provider(s), if any, that will provide the terminating switched access tandem switching and terminating switched access tandem transport services directly, or indirectly through a local exchange carrier, to the IPES Provider engaged in Access Stimulation; and

(3) That the IPES Provider may pay for those services as of that date.

(e) In the event that an Intermediate Access Provider receives notice under paragraphs (b) or (d) of this section that it has been designated to provide terminating switched access tandem switching or terminating switched access tandem transport services to a local exchange carrier engaged in Access Stimulation or to an IPES Provider engaged in Access Stimulation, directly, or indirectly through a local exchange carrier, and that local exchange carrier engaged in Access Stimulation shall pay or the IPES Provider engaged in Access Stimulation may pay for such terminating access service from such Intermediate Access Provider, the Intermediate Access Provider shall not bill Interexchange Carriers for interstate or

intrastate terminating switched access tandem switching or terminating switched access tandem transport service for traffic bound for such local exchange carrier or IPES Provider but, instead, shall bill such local exchange carrier or may bill such IPES Provider for such services.

(f) Notwithstanding paragraphs (a) and (b) of this section, any local exchange carrier that is not itself engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this chapter, but serves as an Intermediate Access Provider with respect to traffic bound for a local exchange carrier engaged in Access Stimulation or bound for an IPES Provider engaged in Access Stimulation, or receives traffic from an Intermediate Access Provider destined for an IPES Provider engaged in Access Stimulation, shall not itself be deemed a local exchange carrier engaged in Access Stimulation or be affected by paragraphs (a) and (b) of this section.

(g) Upon terminating its engagement in Access Stimulation, as defined in § 61.3(bbb) of this chapter, the local exchange carrier or IPES Provider engaged in Access Stimulation shall provide concurrent, written notification to the Commission and any affected Intermediate Access Provider(s) and Interexchange Carrier(s) of such fact.

**PART 61 – TARIFFS**

4. The authority citation for part 61 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 201-205, 403, unless otherwise noted.

5. Amend § 61.3 by revising paragraphs (bbb) through (ddd), and adding paragraph (eee) to read as follows:

**§ 61.3 Definitions.**

* * * * *

(bbb) Access Stimulation.

(1) A Competitive Local Exchange Carrier or an IPES Provider serving end user(s) engages in Access Stimulation when it satisfies either paragraphs (bbb)(1)(i) or (ii) of this

section; and a rate-of-return local exchange carrier serving end user(s) engages in Access Stimulation when it satisfies either paragraphs (bbb)(1)(i) or (iii) of this section.

(i) The rate-of-return local exchange carrier, Competitive Local Exchange Carrier, or IPES Provider:

(A) Has an access revenue sharing agreement, whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier, Competitive Local Exchange Carrier, or IPES Provider is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier, Competitive Local Exchange Carrier, or IPES Provider to the other party to the agreement shall be taken into account; and

(B) Has either an interstate terminating-to-originating traffic ratio of at

least 3:1 in an end office or equivalent in a calendar month, or has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year for such end office or equivalent.

(ii) A Competitive Local Exchange Carrier or IPES Provider has an interstate terminating-to-originating traffic ratio of at least 6:1 in an end office or equivalent in a calendar month.

(iii) A rate-of-return local exchange carrier has an interstate terminating-to-originating traffic ratio of at least 10:1 in an end office or equivalent in a three-calendar month period and has 500,000 minutes or more of interstate terminating minutes-of-use per month in the same end office in the same three-calendar month period. These factors will be measured as an average over the three-calendar month period.

(2) A Competitive Local Exchange Carrier serving end users or an IPES Provider serving end users that has engaged in Access Stimulation will continue to be deemed to be engaged in Access Stimulation until: For a carrier or provider engaging in Access Stimulation as defined in paragraph (1)(i) of this section, it terminates all revenue sharing agreements covered in paragraph (1)(i) of this section and does not engage in Access Stimulation as defined in paragraph (1)(ii) of this section; and for a carrier or provider engaging in Access Stimulation as defined in paragraph (1)(ii) of this section, its interstate terminating-to-originating traffic ratio for an end office or equivalent falls below 6:1 for six consecutive months, and it does not engage in Access Stimulation as defined in paragraph (1)(i) of this section.

(3) A rate-of-return local exchange carrier serving end users that has engaged in Access Stimulation will continue to be deemed to be engaged in Access Stimulation until: For a carrier engaging in Access Stimulation as defined in paragraph (1)(i) of this section, it terminates all revenue sharing agreements covered in paragraph (1)(i) of this section and does not engage in Access Stimulation as defined in paragraph (1)(iii) of this section; and for a carrier engaging in Access Stimulation as defined in paragraph (1)(iii) of this section, its interstate terminating-to-originating traffic ratio falls below 10:1 for six consecutive months and its monthly interstate terminating minutes-of-use in an end office or equivalent falls below 500,000 for six consecutive months, and it does not engage in Access Stimulation as defined in paragraph (1)(i) of this section.

(4) A local exchange carrier engaging in Access Stimulation is subject to revised interstate switched access charge rules under § 61.26(g) (for Competitive Local Exchange Carriers) or § 61.38 and § 69.3(e)(12) of this chapter (for rate-of-return local exchange carriers).

(ccc) *Intermediate Access Provider*. The term means, for purposes of this part and §§ 69.3(e)(12)(iv) and 69.5(b) of this chapter, any entity that provides terminating switched

access tandem switching and terminating switched access tandem transport services between the final Interexchange Carrier in a call path and:

(1) A local exchange carrier engaged in Access Stimulation, as defined in paragraph (bbb) of this section; or

(2) A local exchange carrier delivering traffic to an IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section or;

(3) An IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section where the Intermediate Access Provider delivers calls directly to the IPES Provider.

(ddd) *Interexchange Carrier*. The term means, for purposes of this part and §§ 69.3(e)(12)(iv) and 69.5(b) of this chapter, a retail or wholesale telecommunications carrier that uses the exchange access or information access services of another telecommunications carrier for the provision of telecommunications.

(eee) *IPES (Internet Protocol Enabled Service) Provider*. The term means, for purposes of this part and §§ 51.914, 69.4(l) and 69.5(b) of this chapter, a provider offering a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location or end to end; (3) requires Internet Protocol-compatible customer premises equipment (CPE); and (4) permits users to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network or that originate from an Internet Protocol service and terminate to an Internet Protocol service or an Internet Protocol application.

* * * * *

**PART 69 – ACCESS CHARGES**

6. The authority citation for part 69 continues to read as follows:

**Authority:** 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

7. Amend § 69.4 by revising paragraph (l) to read as follows:

**§ 69.4 Charges to be filed.**

* * * * *

(l) Notwithstanding paragraph (b)(5) of this section, a local exchange carrier engaged in Access Stimulation as defined in § 61.3(bbb) of this chapter or the Intermediate Access Provider it subtends, or an Intermediate Access Provider that delivers traffic directly or indirectly to an IPES Provider engaged in Access Stimulation as defined in § 61.3(bbb) of this chapter, shall not bill an Interexchange Carrier as defined in § 61.3(bbb) of this chapter for interstate or intrastate terminating switched access tandem switching or terminating switched access tandem transport charges for any traffic between such local exchange carrier's or such IPES Provider's terminating end office or equivalent and the associated access tandem switch.

8. Amend § 69.5 by revising paragraph (b) to read as follows:

**§ 69.5 Persons to be assessed.**

* * * * *

(b) Carrier's carrier charges shall be computed and assessed upon all Interexchange Carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services, except that:

(1) Local exchange carriers shall not assess terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charges described in § 69.4(b)(5) of this chapter on Interexchange Carriers when the terminating traffic is destined for a local exchange carrier or an IPES Provider engaged in Access Stimulation, as that term is

defined in § 61.3(bbb) of this chapter consistent with the provisions of § 61.26(g)(3) of this chapter and § 69.3(e)(12)(iv).

(2) Intermediate Access Providers shall not assess ~~a~~ terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charges described in § 69.4(b)(5) of this chapter on Interexchange Carriers when the terminating traffic is destined for a local exchange carrier engaged in Access Stimulation, or is destined, directly or indirectly, for an IPES Provider engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this chapter consistent with the provisions of § 61.26(g)(3) of this chapter and § 69.3(e)(12)(iv).

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